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HOUSE BILL NO. 1959

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend the Code of Virginia by adding a section numbered 65.2-308.1, relating to discharge of public safety employees with line of duty injury or occupational illness.

Patrons—Mathieson and Shannon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 65.2-308.1 as follows:

§ 65.2-308.1. Discharge of injured public safety employees.

A. As used in this section:

"Full unrestricted duty" means a return to work in a capacity that will permit the public safety employee to resume all of the major physical requirements of the position held by the employee when the injury occurred or illness arose without significant accommodation by the employer.

"Involuntarily discharge or otherwise terminate" means any unilateral action taken by an employer that leads to the separation and removal of the public safety employee from the position held by the employee when the injury occurred or illness arose.

"Line of duty injury or occupational illness" means any injury or illness compensable under this title.

"Medical opinion" means an opinion of a qualified health care provider who is the primary medical provider to the public safety employee.

"Physician" means any qualified health care provider licensed to practice medicine in the Commonwealth or any other state where the provider is the primary medical provider to the public safety employee.

"Public safety employee" means an employee, as defined § 65.2-101, who is a (i) salaried or volunteer firefighter, paramedic or emergency medical technician, (ii) member of the State Police Officers' Retirement System, (iii) member of county, city, or town police departments, (iv) sheriff or deputy sheriff, (v) Department of Emergency Management hazardous materials officer, (vi) city sergeant or deputy city sergeant of the City of Richmond, (vii) Virginia Marine Police officer, (viii) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries, (ix) Capitol Police officer, (x) special agent of the Department of Alcoholic Beverage Control appointed under the provisions of Chapter 1 (§ 4.1-100 et seq.) of Title 4.1, (xi) for such period that the Metropolitan Washington Airports Authority voluntarily subjects itself to the provisions of this chapter as provided in § 65.2-305, officers of the police force established and maintained by the Metropolitan Washington Airports Authority, (xii) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, or (xiii) officer of the police force established and maintained by the Norfolk Airport Authority.

"Public safety employer" means the Commonwealth, a locality, or other political subdivision of the Commonwealth that employs a public safety employee who has filed a claim under this title with respect to a line of duty injury or occupational illness.

"Resume employment without significant limitations" refers to the ability of a public safety employee to resume all of the duties of the position held by the employee when the line of duty injury occurred or occupational illness arose, which ability is evidenced by a release secured from his physician.

B. A public safety employer shall not involuntarily discharge or otherwise terminate the employment of a public safety employee suffering from a line of duty injury or occupational illness due to such injury or illness for a period of:

1. One year following the date of occurrence or onset of the line of duty injury or occupational illness, if the employee has not returned to employment in full unrestricted duty; or

2. Two years following the date of occurrence or onset of the line of duty injury or occupational illness, if a physician has determined by qualified medical opinion, before the expiration of the one-year period set forth in subdivision B 1, that the employee, within the ensuing one year, will reach maximum medical improvement and, to a reasonable degree of medical probability, will resume employment without significant limitations in the position held by the employee when the line of duty injury occurred or occupational illness arose.

C. A public safety employer shall be permitted to require the public safety employee, at no cost to the employee, to submit to a fitness for duty evaluation conducted by a physician to determine the residual medical condition of the injured or ill employee for return to full unrestricted duty status. In

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59 *the event of a conflict between the medical opinions of such physician and the physician who is the*
60 *primary medical provider to the public safety employee, the employee and employer shall each agree*
61 *upon a third physician who, at no cost to the employee, shall conduct a final and binding fitness for*
62 *duty evaluation to determine the residual medical condition of the employee for return to full*
63 *unrestricted duty status.*

64 *D. A public safety employer shall be permitted to require the public safety employee, at no cost to*
65 *the employee, to submit to a fitness for duty evaluation of whether the employee is able to resume*
66 *employment without significant limitations, prior to returning the employee to the position last occupied*
67 *by the employee in which the injury occurred or occupational illness first arose. In the event of a*
68 *conflict between the two fitness for duty evaluations, the employee and employer shall each agree upon*
69 *a third physician who, at no cost to the employee, shall conduct a final and binding fitness for duty*
70 *evaluation to determine whether the employee is able to resume employment without significant*
71 *limitations.*

72 *E. This section shall not be construed to limit any rights provided by § 65.2-308.*

73 *F. A public safety employee may bring an action in a circuit court having jurisdiction over the*
74 *employer or person who allegedly discharged the employee in violation of this section. The court shall*
75 *have jurisdiction, for cause shown, to restrain violations and order appropriate relief, including actual*
76 *damages and attorney fees to successful claimants and the rehiring or reinstatement of the employee,*
77 *with back pay plus interest at the judgment rate as provided in § 6.1-330.54.*